

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

QUINCY HAMILTON, BRYANT D. FARMER
& PATRICK TAYLOR

PLAINTIFFS

V.

4:06CV00519 JLH/HDY

BOBBY BROWN

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

DISPOSITION

Plaintiffs initiated this 42 U.S.C § 1983 action by filing a complaint (docket entry #2) on May 2, 2006. Plaintiffs Bryant D. Farmer and Patrick Taylor were dismissed by order entered July 14, 2006 (docket entry #22), leaving only Plaintiff Hamilton as a Plaintiff. On December 7, 2006, Defendant filed a motion to dismiss, asserting that he had been unable to serve Plaintiff with his answer or interrogatories (docket entry #38).

On December 21, 2006, this Court entered an order directing Plaintiff to provide, within 11 days, an address at which he could be served with Defendant’s answer and interrogatories (docket entry #42). Plaintiff was warned that his failure to provide the address would result in the recommended dismissal of his complaint.¹ More than 30 days has now passed, and Plaintiff has not responded to that order.

¹Although that order was sent to Plaintiff at the address he provided, it was returned (docket entry #41). Previously returned mail had a notation indication that Plaintiff was no longer at the Faulkner County Jail (docket entry #34).

Under these circumstances, the Court concludes that this case should be dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2). *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (“District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and we review the exercise of this power for abuse of discretion.”)

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff’s complaint (docket entry #2) be DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2).
2. All pending motions be denied as moot.
3. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action be considered frivolous and not in good faith.

DATED this 25 day of January, 2007.



UNITED STATES MAGISTRATE JUDGE